

USDOL/OALJ Reporter

[\*Allen v. Williams Power Co.\*](#), 1998-ERA-36 (ALJ Oct. 7, 1998)

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**U.S. Department of Labor**  
Office of Administrative Law Judges  
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Boston, Massachusetts 02109  
Room 507  
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Dated: October 7, 1998

Case No.: 98-ERA-36

File No.: 01-0240-98-007

IN THE MATTER OF:

**Jeffrey W. Allen**  
Complainant

v.

**Williams Power Company**

and

**Vermont Yankee Nuclear Power Corporation**  
Respondents

**RECOMMENDED DECISION AND ORDER  
APPROVING CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE  
and  
DISMISSING COMPLAINT WITH PREJUDICE**

This is a proceeding arising under the Energy Reorganization Act, 42 U.S.C. §5851, and its implementing regulations found at 29 C.F.R. Part 24. The undersigned is presently in receipt of a Joint Motion for a Recommended Decision and Order Approving Settlement Agreement and Dismissal With Prejudice. Attached to that Joint Motion is a Release and Settlement Agreement, executed by all parties on September 23, 1998.

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The Part 24 regulations do not contain any provision relating to a dismissal of a complaint by voluntary settlement. Therefore, it is necessary to refer to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which Rules are controlling in the absence of a specific provision at Part 24.

Part 18.9 allows the parties in a proceeding before an administrative law judge to reach agreement on their own. 29 C.F.R. Part 18.9(a)-(c). The parties must "[n]otify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action." 29 C.F.R. Part 18.9(c)(2). Once such notification occurs, the administrative law judge shall then issue a decision within thirty (30) days if satisfied with the agreement's form and substance. 29 C.F.R. Part 18.9(d).

This Judge must review the Settlement Agreement to determine whether its terms are a fair, adequate and reasonable settlement of the complaint. **Bonanno v. Stone & Webster Engineering Corp.**, 97-ERA-33 (ARB 6/27/97) (citation omitted). In the matter sub judice, I note that the terms of the settlement agreement encompass the settlement of matters arising under various laws, only one of which is the ERA. **See generally** para. 3. For the reasons set forth in **Poulos v. Ambassador Fuel Oil Co., Inc.**, 86-CAA-1 (Sec'y 11/2/87), I have limited my review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of Complainant's allegation that Respondent violated the ERA.

Upon careful review, this Judge has reached the determination that the Release and Settlement Agreement fully comports with precedent established by the Secretary and/or Administrative Review Board.

The parties have included language in the agreement to the effect that neither party believes it acted unlawfully and that nothing in the agreement should be construed as an admission of liability. **See** para. 15. This recommended decision and order shall not be construed as indicating my view on the merits of this entire matter.

Paragraph 16 of the settlement provide that the parties shall keep the terms of the settlement confidential. I note, however, the parties' effort to bring this confidentiality provision into compliance with applicable case law, such as **McGlynn v. Pulsair Inc.**, 93-CAA-2 (Sec'y 6/28/93), by specifically providing the confidentiality provision does not restrict disclosure where required by law. **See** para. 16

In accordance with **Biddy v. Pipeline Service Co.**, 95-TSC-7 (12/3/96), the parties have certified that no other settlement agreements were entered into between the parties. **See** para. 12.

This Judge notes the parties have designated the Settlement Agreement and Release as confidential commercial information, as defined at 29 C.F.R. Part 70.26, and thereby

attempt to preclude disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. §552. In this regard, *see* para. 16.

FOIA, however, requires agencies to disclose requested documents unless they are exempt from disclosure. See **Bonanno**, *supra*, at p. 2.; **Klock v. Tennessee Valley Auth.**, 95-ERA-20 (ARB 5/30/96), at p. 2; **Darr v. Precise Hard Chrome**, 95-CAA-6 (Sec'y 5/9/95), at p. 2; **Webb v. Consolidated Edison Co.**, 93-CAA-5 (Sec'y 11/3/93) at p. 2. Since no FOIA request has been made, "it would be premature to determine whether any of the exemptions in FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It would also be inappropriate to decide such questions in this proceeding." **Darr**, *supra*, at pp. 2-3. See Also **DeBose v. Carolina Power and Light Co.**, 92-ERA-14 (Sec'y 2/7/94), at p. 3. Nevertheless, the Release and Settlement Agreement shall be placed in a portion of the file clearly designated as confidential commercial information which must be handled in accordance with the appropriate procedure for a FOIA request, which procedure is found at 29 C.F.R. Part 70.26. See **Generally Bonanno**, *supra*, at n. 1.

Accordingly, it is hereby **RECOMMENDED** that the Release and Settlement Agreement between Complainant Jeffrey W. Allen and Respondents Williams Power Company and Vermont Yankee Nuclear Power Corporation be **APPROVED** and that the matter be **DISMISSED WITH PREJUDICE**. It is **FURTHER RECOMMENDED** that the Release and Settlement Agreement be designated as confidential commercial information and be handled in accordance with 29 C.F.R. Part 70.26.

DAVID W. DI NARDI  
Administrative Law Judge

Boston, Massachusetts  
DWD:pte

**NOTICE:** This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. §24.8, a petition for review is timely filed with the Administrative Review Board, U.S. Department of Labor, Frances Perkins Building, Room S-4309, 200 Constitution Avenue, N.W., Washington D.C. 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. See 29 C.F.R. §§24.8 and 24.9, as amended by 63 Fed. Reg. 6614 (1998).